

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

October 12, 2005

**I.
PLEDGE OF
ALLEGIANCE**

Chair Williams called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Azevedo, Galang, Garcia, Lalwani, Mandal, Mohsin and Williams

Absent:

Staff: Carrington, Pereira, Randisi, Rodriguez and Williams

Staff announced that Commissioner Mohsin would be ten minutes late to the meeting.

**III
PUBLIC FORUM**

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Don Peoples, President of the Rotary Club, announced that the Fall Fundraiser Casino Night be held on November 5th at the McCarthy conference center. This year will be a Texas Holdem tournament and for more information visit www.rotaryholdem.com.

**IV.
APPROVAL OF MINUTES
September 28, 2005**

Chair Williams called for approval of the minutes of the Planning Commission meeting of September 28, 2005.

There were no changes from staff.

Motion to approve the September 28, 2005 minutes.

M/S: Lalwani/Galang

AYES: 4

NOES: 0

ABSTENTIONS: 2 (Garcia and Azevedo-absent at the meeting)

**V.
ANNOUNCEMENTS**

Commissioner Garcia announced that he would not attend the October 26th meeting because he will be out of town.

Tom Williams, Planning and Neighborhood Services Director, announced that two Planning Commission seats expire in December and interested applicants can submit their applications to the City Clerks office.

**VI.
CONFLICT
OF INTEREST**

Chair Williams asked if the Commission has any conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

Chair Williams called for approval of the agenda.

**VII.
APPROVAL OF
AGENDA**

Mr. Williams noted that at the request of staff and the applicant, Agenda Item No. 4 (Major Tentative Map Amendment No. TM2005-1) should be removed from the agenda and may be brought forward at a future date.

Motion to approve the agenda with the removal of Agenda Item No. 4.

M/S: Mandal/Azevedo

AYES: 6

NOES: 0

VIII.
CONSENT CALENDAR
Item No. 1

Chair Williams asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Staff had no changes to the consent calendar.

Chair Williams opened the public hearing on Consent Item No. 1

There were no speakers from the audience.

Close the public hearing

Motion to close the public hearing on Consent Item No. 1.

M/S: Galang/Mandal

AYES: 6

NOES: 0

Motion to approve the consent calendar on Consent Item No. 1.

M/S: Lalwani/Galang

AYES: 6

NOES: 0

***1 USE PERMIT APPROVAL AMENDMENT NO. UA2005-11 AND “S” ZONE APPROVAL AMENDMENT NO. SA2005-53:** A request to convert an existing loading dock and storage area into a multi-purpose room, minor exterior building modifications, and a parking modification for a religious facility located in the Dixon Landing Business Park, zoned Industrial Park (MP), at 1494 California Circle.

IX. PUBLIC HEARING

**1. MAJOR TENTATIVE
MAP NO. MA2005-2**

Staci Pereira, Assistant Planner, presented Major Tentative Map No. MA2005-2, a request for a vesting major tentative map to subdivide 4.56 acres (currently three parcels) into twelve parcels with nine parcels for 147 multifamily condominium units and three parcels for the associated common areas located at 1696 South Main Street and 75 Montague Expressway. Staff recommended approval to City Council and also modified special Condition No. 6 that reads as follows:

6. *Prior to final map approval, the developer shall obtain design approval and bond for all necessary public improvements along S. Main Street and temporary improvements along Montague Expressway, including but not limited to curb and gutter, pavement, sidewalk, signage and striping, landscaping improvements, tree grates, undergrounding of overhead utilities, fire hydrants, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24" x 36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor and materials. The locations of public facilities such as water meters, RP backflow preventers (which includes cages and are above ground), sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic (E)*

Pat Brown with RGC representing the Oak Springs Development, explained that the Tentative Map application came before the S-Zone and Use Permit application because of scheduling conflicts. After submitting plans for building design, the applicant made several changes such as expanding the recreation facility, revising the architecture to create better tower elements and revising the paseos. Mr. Brown noted that the applicant is in agreement with all of the conditions of approval.

Commissioner Lalwani asked if there will be a traffic light at the entrance of Lot C. Mr. Brown said that he is not aware of a traffic light however, the applicant worked with the City for an additional median on Main Street that would be funded with in lieu fees. The median would help separate traffic between Montague and Great Mall Parkway and would prevent traffic from crossing from southbound Main Street to the southern entrance of the project. There would also be a left turn pocket that would allow vehicles traveling south on Main to turn into the project site, but would restrict residents from making a left turn on Main Street.

Commissioner Lalwani pointed out Lot and asked what it would be used for and Ms. Pereira replied that Lot B would be for the garbage enclosure.

Commissioner Lalwani pointed at the intersection of South Main Street and Montague and asked if there would be a wall there and Ms. Pereira said yes.

Commissioner Garcia said he is concerned about the quality of life because there is a Jack-in-the-Box right in the middle of the project. He asked if there will be requirements for odor control. Ms. Pereira stated that staff cannot require Jack-in-the-Box to do odor control because they are an existing condition, however, a noise analysis has been prepared and staff is looking at a sound wall around the property and having noise barriers at the patios.

Commissioner Garcia asked if the developer could pay for an odor scrubber for Jack-In-the-Box. Mr. Williams said that staff is looking into that and is waiting for input from legal staff to see if it is possible.

Commissioner Garcia asked if the nearby mosque will have restrictions because of the housing project. Ms. Pereira replied that the mosque has been approved and has received their entitlements and that there are no new requirements on their project.

Commissioner Williams asked if the architectural plans for the mosque will be the same and Ms. Pereira stated that she is not aware of any changes.

Commissioner Mandal asked what is the height of the wall that will be surrounding the complex near Jack-in-the-Box. Ms. Pereira deferred the question to the applicant.

Commissioner Mandal asked about the landscaping plan and said he would like to review it before the project moves forward. Ms. Pereira stated that there will be landscaping around the gas station and between the buildings and the property line. There will also be landscaping around the existing storage building that sits on the property line and staff will ensure that trees will screen the existing building. There will also be landscaping around the Jack-in-the-Box and the north and east side around the recreation area.

Mr. Brown added that the applicant looked at the streets because they allow for bigger setbacks between the building and adjacent uses. On the north side of Jack-in-the-Box, there is a street between Jack-in-the-Box and the buildings to keep as much separation as possible. There will also be a six-foot screen wall near the recreation area by the Jack-in-the-Box and an 8-foot screen wall near the Shell Gas Station.

Commissioner Mandal asked how many stories there are and Mr. Brown replied three stories over a garage.

Commissioner Mandal strongly suggested that the applicant add trees to block the noise and odor.

Commissioner Lalwani asked if there will be a small park near the recreation area. Mr. Brown said that the recreation area will have a deck, outdoor barbeque and badminton court and the grass area is about 45 by 100 feet.

Commissioner Lalwani asked if the target market is working couples and Mr. Brown said yes.

Commissioner Lalwani asked how does staff calculate park requirements. Ms. Pereira replied that the requirements are 3 ½ acres required by every 1000 people. So staff takes the number of units and multiplies it by the number of persons per household, which equals the parkland requirements.

Commissioner Lalwani asked what school would the children attend and Mr. Brown said Zanker Elementary.

Vice Chair Galang asked what is the distance from the property to Jack-in-the-Box and Mr. Brown replied seven feet from the closest building and 45 feet from the north side.

Vice Chair Galang asked if the front doors of the condominium face Jack-in-the-Box. Mr. Brown noted that only 3 units have front doors that face Jack-in-the-Box.

Vice Galang said he would be concerned living near Jack-in-the-Box because of noise and odor.

Chair Williams agreed with his fellow Commissioners about noise coming from the Jack-in-the-Box drive thru speakers and the car wash machine from the Shell Gas Station. He said it would be hard to get Shell and Jack-in-the-Box to change their procedures because they were there first. He suggested that new buyers be given conditions that make them aware that they will be living near a restaurant and gas station.

Mr. Brown agreed with Chair Williams and said there are a number of different disclosures that happen in a real estate transaction and he could work with staff to create something for the buyer that states what the issues are.

Chair Williams opened the public hearing.

There were no speakers from the audience:

Close the public hearing

Motion to close the public hearing:

M/S: Mohsin/Azevedo

AYES: 7

NOES: 0

Commissioner Mandal asked what is the distance between the project and the mosque and Mr. Brown said eight feet.

Commissioner Mandal suggested adding trees along the perimeter between the mosque and the residential project. Ms. Pereira stated that the Midtown plan requires 25% of the project to be landscaped and there will be shrubs and trees, which will occur along the whole perimeter of the property.

Chair Williams recalled that the mosque was only requiring a few palm trees and that this project proposal has much better landscaping.

Commissioner Lalwani asked why didn't the applicant purchase Jack-in-the-Box. Mr. Brown said they are a big corporation and didn't even want to talk to them and it is a good location for them.

Chair Williams added that it is the only restaurant in the area that is open 24 hours.

Commissioner Lalwani said that she likes the project and thinks that the landscaping plan would enhance the area.

Commissioner Mandal asked if it is an appropriate time to condition the project about the landscaping plan. Mr. Williams noted that the appropriate time to make changes would be when the site and architectural elements of the project come back to the Commission for review.

Commissioner Lalwani asked why will the application be coming back and Mr. Williams said that it requires Commission approval for noise circulation, on site parking, landscaping and zoning.

Motion recommending approval to City Council for Major Tentative Map No. MA2005-2 with modification to Condition No. 6.

M/S: Mohsin/Azevedo

AYES: 7

NOES: 0

**2. REVISIONS TO THE
MILPITAS MUNICIPAL
CODE CHAPTER 2
TREE AND PLANTING
TO ADD A HERITAGE
TREE PROGRAM,
ZT2005**

Dennis Carrington, Senior Planner and Carol Randisi, Public Works Supervisor, presented proposed amendments to the City of Milpitas Heritage Tree and Planting Ordinance to include the Heritage Tree Program that would incorporate a new Heritage Tree Program. Key changes include: Addition of Section 2, Definitions, X-2-2.10, Heritage Tree Program and Section 7 Tree Protection, X-7-01-3, Heritage Tree Program. The program would increase public awareness of the important contribution of trees to the residents of Milpitas. The goals of the program are to recognize and designate individual trees or groves of trees to promote appreciation of the trees and their benefit to the community, and to nurture and protect the trees as part of the city's heritage. Staff recommended that the City Council amend the City of Milpitas tree and planting ordinance to include the heritage tree program as shown in the staff report.

Commissioner Mandal asked if there is a plaque that could be put on the heritage tree and Ms. Randisi said that staff could create identification signs to promote public awareness.

Commissioner Mandal asked what do other cities do. Ms. Randisi stated that Palo Alto has a placard at the base of one tree.

Commissioner Garcia echoed Commissioner Mandal's comments and felt that the Heritage Tree Program is a worthwhile program and is something that needs to be done.

Commissioner Mohsin asked who will take care of the trees. Ms. Randisi pointed out that the CAC raised the same question and there is a program in Mt. View where staff will look at the tree and if they can't financially take care of it, there is a \$500 dollar in service fee that the city would provide for proper care of the tree. The tree would be protected as required by the ordinance. She also noted that a permit would be needed to remove the tree and if it is a private tree, then it is the property owner's responsibility.

Vice Chair Galang asked if the Heritage Tree Program is available to the public and Ms. Randisi said yes.

Vice Chair Galang asked how would a resident be able to protect a tree. Ms. Randisi said that a resident could nominate a tree and fill out an application and submit it to the city.

Chair Williams said that he appreciated staff's hard effort and hopefully the tree program could help save historical and notable trees.

Commissioner Mandal and Commissioner Garcia recognized the CAC for their hard work on helping Ms. Randisi with the tree program.

Chair Williams suggested that staff should look into small brass plaques on the tree. Ms. Randisi said she would look into the cost.

Ms. Randisi noted the following changes to page 4 of the ordinance:

X-2-4.03 Permit Required for Trimming

It shall be unlawful for any person, other than City personnel, to trim any approved street tree or heritage planting, without first obtaining a permit from the Public Works Department. The permit shall be issued when the Public Works Department finds that the trimming is necessary and that the proposed method is satisfactory. A permit is not required for removing sucker growth, watersprouts, minor limbs causing obstructions, or for the removal of less than 10% of the tree canopy. (Ord. 201.1 [part], 3/1/88)

Chair Williams opened the public hearing.

Don Peoples, 3444 Spring Creek Lane, said that the Heritage Tree Program is a great idea and felt that people don't realize what they have until its gone. He said that he doesn't know why the program would require property owners to approve the application of Heritage Tree status to their tree. Why don't we classify a tree as a heritage tree even if the property owner doesn't want it. The City should help property owners to preserve their large trees so they can become heritage trees. H knows many other cities that have arborists that could be consulted.

Close the public hearing

Motion to close the public hearing:

M/S: Lalwani /Galang

AYES: 7

NOES: 0

Motion to recommend to City Council that they amend the City of Milpitas tree and planting ordinance to include the Heritage Tree Program as shown in the staff report and amended in the last few changes.

M/S: Garcia/Mandal

AYES: 7

NOES: 0

**3. "S" ZONE
APPROVAL
AMENDMENT NO.
SA2005-61**

Mr. Williams presented a request to remove seven (7) protected trees with minor site and building modifications to an existing industrial building located at 601 Vista Way and recommended approval with conditions.

Chair Williams felt that the trees bring character to the area and asked why are they being removed.

Mr. Williams said that the roots are evasive to the sidewalks and that is why the applicant has come back because he doesn't want the trees to buckle the sidewalk and that is why the trees need to be removed and replaced. He said that the Commission might recommend relocating the sidewalk to Vista Way.

Mahesh Patel, Applicant, 461 Park Avenue, San Jose, said that this process caught everyone with surprise. The project was approved last year, and engineering and building asked for a wider sidewalk. The applicant tried to make the sidewalk work, but three feet will not work because it is not ADA approved. The slopes are very steep and will impact more trees.

Chair Williams asked if the engineering department is aware of aesthetics and the ADA requirements to come up with a workable recommendation.

Mr. Williams noted that staff worked with engineering and ADA requires 5-foot sidewalks. Given the variety of trees with the replacement, a species will be better if it grows in the long term rather than the short term. He thought that the sycamore tree would be appropriate because it is fast growing and has a large canopy. He also suggested increasing the size from 24 inches to 36 inches if the Commission desires.

Vice Chair Galang asked if there is another option besides removing the seven protected trees.

Mr. Williams said if the project was denied, then staff would have to address the pedestrian circulation on the sidewalk or the Commission could direct staff to take another look and see if the sidewalk can be modified. He reiterated that planning and engineering researched the project and found that the existing trees are invasive to where the alignment of the sidewalk would be and that is why the trees need to be removed. The Commission could also recommend continue for further review.

Vice Chair Galang suggested that staff should show a picture of the new trees that were going to be replaced.

Commissioner Lalwani preferred the 36 inch box trees rather than the recommended 24 inch box trees and explained that she will approve the project because she felt that engineering and planning already researched the project and there are no other alternatives then to remove the trees and it is ADA approved.

Commissioner Mandal asked if the sidewalk would provide security for pedestrians. Mr. Williams said yes because it meets ADA standards and will enhance pedestrian safety.

Motion to send back “S” Zone Approval Amendment No. SA2005-61 for further review:

M/S: Azevedo/Galang

AYES: 3 (Azevedo, Galang, Williams)

NOES: 4 (Mandal, Garcia, Mohsin, Lalwani)

Motion failed.

Motion to approve “S” Zone Approval Amendment No. SA2005-61 and recommend 36 inch box trees rather than the 24 inch box trees.

M/S: Lalwani/Mandal

AYES: 4 (Mandal, Garcia, Mohsin, Lalwani)

NOES: 3 (Azevedo, Galang, Williams)

Motion passed.

**X.
ADJOURNMENT**

The meeting was adjourned at 8:43 p.m. to the next regular meeting of October 26, 2005.

Respectfully Submitted,

Tom Williams
Planning and Neighborhood
Services Director

Veronica Rodriguez
Recording Secretary